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MAR 25 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket 95-185
	)	CC Docket No. 94-54
Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services Providers	)	

REPLY COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION

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March 25, 1

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SUMMARY

USTA hereby submits its reply comments, on behalf of its membership, who provide a wide variety of telecommunications services, including local exchange and CMRS services. The facts and law placed on the record in the initial comments demonstrate that:

1) As a matter of policy, there is no need for an "interim" plan specifically for CMRS providers. Existing interconnection agreements between LECs and CMRS providers do not violate the Commission's rules, and do not prevent CMRS providers from competing with local exchange carriers or enjoying robust growth;

2) As a matter of law, the Commission may not preclude what Congress has mandated. The Commission may neither mandate the pricing terms of negotiated interconnection agreements nor preempt state regulatory commissions' oversight of such agreements. Additionally, the Commission should affirm its prior determination in the Louisiana CMRS Petition that Section 332 does not give the Commission authority over local interconnection arrangements offered by LECs to CMRS providers.

3) The Commission may not deprive the LECs of property without just compensation; a "bill and keep" framework for interconnection between LECs and CMRS providers will not permit LECs to recover their costs. Even if LECs and CMRS providers share equal termination costs, they are subject to unequal regulations concerning their ability to recover costs from their subscribers. The simple exchange of traffic does not compensate the LEC. LEC subscribers receive less value than CMRS subscribers from the interconnection arrangement.

4) An interim plan would increase the administrative costs of wireless interconnection. An interim bill and keep plan would create new administrative costs associated with recovery of lost revenues through other means, including revenues lost to arbitrage. Accordingly, the Commission should turn its attention to the interconnection proceeding required by Congress.

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REPLY COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) hereby submits its reply comments on the above-referenced Notice of Proposed Rulemaking ("Notice"). USTA is the principal trade association of the local exchange carrier industry, with over 1100 members. The companies who comprise USTA's membership each provide a wide variety of telecommunications services, including local exchange and access services, wireless services, video programming and long distance telecommunications.[1]

INTRODUCTION

The Commission has before it, in the initial comments, a sufficient record demonstrating that there is no basis for preferential treatment of the wireless industry, and that the Commission should instead focus its attention on the broader interconnection proceeding required by the

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[1]Many USTA members, who oppose the tentative conclusion to require LECs to interconnect with CMRS providers on a bill and keep basis, have extensive interests in the competitive provision of CMRS services outside of their LEC region. See, e.g., Comments of SBC Communications at 9-13; Comments of Poka Lambro Telephone Cooperative.

Telecommunications Act of 1996. The record contains ample evidence, including statements by various state regulatory commissions, and the statements of five economists, that the Commission should not begin a jurisdictional power struggle over such the unnecessary and economically flawed conclusion to grant the wireless industry a billion dollar windfall at this critical juncture. USTA will not repeat that evidence at length in these reply comments.

The Commission should proceed expeditiously to address the interrelated issues of local exchange interconnection, interexchange access reform and universal service reform. Such comprehensive reform would go considerably further to recognize, as the Commission stated in the Notice, that the Commission cannot address these issues in a vacuum. See, e.g., Notice, para. 77 (noting "current interstate access charges are problematic," and raising issues of the impact of bill and keep on universal service). Importantly, this approach is consistent with the scope of the Commission's obligations under theTelecommunications Act of 1996. [2]

I. The Commission Should Not Adopt Any Interim Plan for LEC-CMRS Interconnection, But Should Turn Its Attention to the Interconnection Proceeding Required by the Telecommunications Act of 1996

The Commission premised this proceeding on the basis that existing general interconnection policies may not do enough to encourage the development of CMRS, especially in competition with LEC-provided wireline service. Notice, para. 2. But the evidence is clear that CMRS is developing extremely rapidly under existing interconnection arrangements; existing interconnection policies do not represent a barrier to CMRS competition with LEC-provided wireline service. And, Congress has addressed these interconnection issues, with respect to all types of LEC competitors, through the Telecommunications Act of 1996.

[2]In addition to interconnection issues, the Commission must simultaneously work cooperatively with the states and with the Joint Board to reform the universal service mechanisms embedded in LECs present rates for interconnection and interstate access, and to permit LECs to move such access prices closer to actual economic cost. See, e.g., Comments of Pacific Telesis at 21-22.

The initial comments demonstrate that the CMRS industry is strong, vibrant, and offers a wide diversity of services. As demonstrated in the initial comments, the "success story" of the CMRS industry represents development at a phenomenal rate. See, e.g., Comments of USTA, SPR Paper at 14-20. A recent CTIA press release reported that the wireless industry continues to grow at an astounding annual rate of 45%; that prices for wireless services continue to decline (a 46% decline since 1987), and that the cellular industry set its 22nd consecutive record for six months revenues - a total of $8.7 billion in revenues, which represents a 33% increase from the previous year. Wireless carriers have invested a record $2.8 billion in their companies in the first six months of 1995, including nearly 2,000 new cell sites. "Mid-Year Data Survey: Wireless Customers Near 30 Million Mark; Monthly Bills Drop Again," September 21, 1995. There is no basis for the conclusion that the CMRS industry requires special government-imposed advantages to "facilitate its competitive development." Notice, para. 17; Id., para. 77. The PCS industry certainly is expected to experience similar, if not more expansive growth. See, e.g., First Report, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, FCC 95-317 (August 18, 1995), at para.4; see also George Mannes, "Portable Phones Get Affordable," Popular Mechanics, February 1994, at 46 ("observers predict a huge growth in wireless communications").[3]

This phenomenal growth has occurred under existing negotiated interconnection arrangements. This is one reason why a substantial number of parties have stated on the record that they are content with existing interconnection arrangements. See Comments of SBC Communications, citing Reply Comments of CTIA, CC Docket 94-54, at 9 (October 13, 1994)(CTIA states "in considering how best to ensure full and efficient interconnection arrangements between LECs and CMRS providers, the Commission should be guided by the old adage, "if it ain't broke, don't fix it."). In those Reply Comments, CTIA also stated that "the current process of good faith negotiations . . . adequately protects against LEC discriminatory

[3]Given phenomenal growth rates at present prices, there is little economic incentive for CMRS carriers to pass through the cost savings of an interim bill and keep solution to subscribers, particularly where such cost savings are awarded to all CMRS providers.

conduct." Reply Comments of CTIA (October 13, 1994), at 9.

PCS providers negotiating new interconnection agreements now have an additional advantage in that Congress has expressly imposed a duty to negotiate in good faith, and to offer just and reasonable arrangements to any party on the same terms and conditions. See Telecommunications Act of 1996, Section 251(c)(1). Negotiated arrangements are likely to continue to permit CMRS providers, including PCS providers, to enjoy robust growth. For example, despite what APC claims is an unfair arrangement, APC claims to enjoy even traffic flows,[4] and "tremendous success." Comments of APC at 9; Id., at n.16.[5]

Cox and other commenters cite "simple math" that proves that CMRS providers will be unable to provide a competitive service if they are required to pay LECs for interconnection. See, e.g., Comments of Cox at 14. They claim that at a 3 cents/minute interconnection charge, 400 minutes of telephone service per month will cost a CMRS provider $12.00 per month to cover interconnection costs alone, and render it unable to compete with local phone service priced around $12-15 per month for unlimited local calling.

As demonstrated in the initial comments, interconnection charges represent a small percentage (about 8-10%) of the costs of CMRS service. See, e.g., letter from CTIA President Thomas E. Wheeler to The Hon. Reed Hundt, November 20, 1995, at 2 ("approximately 10

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[4] Even so, USTA agrees with the Comments of Time Warner and others that it is too soon to predict whether all PCS providers will enjoy equal incoming and outgoing traffic flows. See, e.g., Comments of Time Warner at 10.

[5] As APC explains, the reasons for its alleged even traffic flow are likely features unique to APC, e.g., first minute free on incoming calls, voice mail, and longer battery life. Yet APC also makes the nonsensical claim that the current cellular experience in traffic flow is "an artifact of the current, wholly one-sided compensation arrangement," notwithstanding the fact that APC itself claims to suffer under a wholly one-sided compensation arrangement. Comments of APC at 11. Clearly, compensation arrangements are not the cause of uneven traffic flows if APC can enjoy relatively even traffic flows through additional features.

percent of the cost of an incremental 35 cent minute of wireless usage is payment to the LEC"). Using this simple math, eliminating a 3 cent/minute interconnection charge would still yield a monthly bill for 400 minutes of $128.00, assuming that all other factors remain constant, and no discounts are involved. Moreover, US WEST's comments note that in its territory, the "typical" residential customer originates approximately 88 minutes of local calls per month which, at US WEST interconnection rates, would cost a CMRS provider only $1.99 each month. Depending on the type of interconnection sought by a CMRS provider, these charges may be even less. See Comments of US WEST at 15-16; Id., at 16, n.23.

Bill and keep proponents appear to believe that existing interconnection arrangements are all that stand between providing American consumers with premium services at bargain prices. But existing (or soon to be negotiated) interconnection arrangements are not a barrier to the evolution of local competition, whether from wireline or wireless providers. As a noted economist stated, "[n]o economic reason exists to grant a subsidy to PCS by using a Bill and Keep approach because the future success of PCS is not affected by interconnect prices." Statement of Professor Jerry A. Hausman, Exhibit B attached to Comments of Pacific Bell, at 26, para. 59. Other factors will determine whether PCS becomes a viable competitor for local exchange services. As APC/Sprint Spectrum notes, whether PCS becomes a substitute for local exchange services remains to be seen, and a number of factors other than call termination are relevant to that determination, e.g. the costs of microwave relocation. See Joint Comments of Sprint Spectrum and APC at 9, n.18.

II. The Commission Does Not Have the Authority to Mandate the Terms of Interconnection Arrangements or Preempt State Oversight of LEC Interconnection

As explained in the initial comments, the Telecommunications Act of 1996 expressly provides for the method of enforcing LEC interconnection obligations to requesting telecommunications carriers in Sections 251 and 252. Such requesting telecommunications carriers expressly include CMRS providers. See Telecommunications Act of 1996, Section 3 (47

U.S.C. § 153(nn) defines telecommunications carrier to include any provider, other than aggregators, of telecommunications service); Id., Explanatory Report of the Committee of Conference, at 1. ("the term 'telecommunications service' is intended to include commercial mobile service"). These sections of the act provide for negotiated interconnection agreements, subject to state regulatory oversight. See, e.g., Comments of The People of the State of California at 19-25 ("California"); see also Ex parte letter, February 26, 1996, filed by Bell Atlantic and Pacific Telesis ("Kellogg ex parte"). As these parties correctly note, the Commission does not have the authority to mandate the terms and conditions of LEC-CMRS interconnection arrangements.

Additionally, as noted by Sprint, the Sierra-Mobile doctrine states that abrogating existing contracts between LECs and CMRS providers would require a strong showing, Comments of Sprint at 3, which cannot be met here. See FPC v. Sierra Pacific Power Co., 360 U.S. 348, 353-55 (1956); United Gas Co. V. Mobile Gas Corp., 350 U.S. 332, 344 (1956). The Sierra-Mobile doctrine requires that, for the Commission to prescribe a change in contract rates, it must find those rates to be unlawful. See, e.g., Comments of PCIA at 1, citing Western Union Telegraph Co. v. FCC, 815 F.2d 1495, 1501 (D.C. Cir. 1987). There is no basis for abrogating existing contracts between LECs and cellular carriers. Moreover, as parties begin the negotiation process envisioned by Congress and enter into contractual interconnection agreements or become subject to state commission rulings with respect to interconnection arrangements, interference by the Commission would be particularly inappropriate. The Telecommunications Act imposed on LECs an obligation to negotiate in good faith immediately upon enactment, and many LECs have already begun to fulfill this obligation, and hope to have reached agreements with their competitors, including CMRS providers, by the time the Commission might issue an Order in this proceeding.

A number of parties argue that the Commission retains authority to mandate the prices, terms and conditions of interconnection services provided to CMRS providers under the 1993 Budget Act, and therefore may preempt any state regulations inconsistent with Commission objectives. This argument misreads the 1993 Budget Act provisions, which were never intended to address interconnection. There is no authority over LEC interconnection offerings which can be "saved" by the Telecommunications Act of 1996. See Comments of Cellular Resellers Association at 7-12. Mandatory federal regulation of local interconnection prices cannot be reconciled with the comprehensive plan enacted by Congress for LECs' offering of interconnection arrangements with their competitors.

A. The Commission Does Not Have Authority Under the 1993 Budget Act To Regulate LEC Interconnection Services Offered to CMRS Providers

Some parties argue that the 1993 Budget Act placed CMRS services within the exclusive interstate jurisdiction of the Commission. See, e.g., Comments of Cox at 36; see also ex parte of Cox Enterprises, Inc., February 28, 1996 (Memorandum from Dow, Lohnes and Albertson, Counsel for Cox Enterprises); Comments of CTIA at 68-70 (state jurisdiction is not foreclosed, but explicitly and profoundly limited). Having established CMRS as an interstate service, these parties then make several leaps of logic in an attempt to establish that the interconnection services offered by LECs are similarly interstate CMRS services exempt from state authority.

The CMRS providers' first attempt is to argue that the Budget Act preempts rates charged to CMRS providers. As we explained in our comments, the Budget Act cannot plausibly be read to govern the rates charged by LECs to CMRS providers. Comments of USTA at 17. The Commission correctly reached this conclusion in a prior proceeding. See Report and Order, 10 FCC Rcd 7898, 7908 (1995)(noting that state regulation of the interconnection rates charged by LECs to CMRS providers is not circumscribed in any way by Section 332(c)).

Section 332 preempts state regulation of mobile services only - and interconnection services are not mobile. See Section 332(d)(1). As the CMRS providers acknowledge, Section 152(b) is modified by Section 332, see, e.g., Cox ex parte at 2, but Section 332 says nothing about interconnection services offered by LECs. Similarly, Section 332 provides that it does not expand the Commission's authority under Section 201. See 47 U.S.C. § 332(c)(1)(B). The

CMRS providers simply rely on the bald assertion that because state regulation of CMRS providers is preempted, then it must be that state regulation of any service purchased by CMRS providers is preempted.[6] There is no basis in the record for the Commission to reverse its previous decision in the Louisiana CMRS Petition. See 10 FCC Rcd at 7809.

The CMRS providers make yet another unjustified leap in reasoning regarding Congress' actions in the 1993 Budget Act. They argue that the fact that the Budget Act "federalized" jurisdiction over the rates for CMRS services, thus making facilities and services used to originate and terminate CMRS calls, including LEC facilities, jurisdictionally interstate. See, e.g., Comments of Comcast at 29-30. But Congress did nothing of the sort. Congress merely preempted state and local authority to regulate rates and market entry of CMRS providers. Congress did not establish the nature of the service - in fact, Congress would not have provided that states could continue to regulate such services (subject to Commission grant of a state petition), if CMRS services were permanently classified as entirely interstate. See 47 U.S.C. § 332(c)(3)(A); 47 U.S.C. § 152(a)(entrusting the Commission with sole authority over interstate services).[7]

In the 1993 Budget Act, Congress did not eliminate the jurisdictional separation of powers enacted in Sections 152(a) and (b) of the Communications Act. Rather, while providing for a uniform national policy governing CMRS services - which require a federal license - the Budget Act left untouched state authority to regulate LEC interconnection services provided to

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[6]In at least one other instance the 1996 Act preserves state and local regulatory authority over a key input to CMRS service - the placement and construction of wireless facilities and towers. See Telecommunications Act of 1996, Section 704.

[7]Moreover, considering CMRS traffic as "interstate" ignores the nature of the traffic involved, which is almost entirely intrastate. As noted by US WEST, no CMRS provider reports interstate traffic, because to the extent that LECs terminate CMRS providers' interstate traffic LECs are required to charge CMRS providers the applicable interstate access charge. See, e.g., FCC Policy Statement on Interconnection of Cellular Systems, 59 R.R. 2d 1283, 1284-85, n.3 (1986); Comments of US WEST at 20.

CMRS providers (or to other competitors, for that matter). See 10 FCC Rcd at 7908. The Telecommunications Act of 1996, Sections 251 and 252, in fact reaffirms state authority over negotiated agreements for interconnection services provided by LECs to local competitors. While Congress may have envisioned that CMRS providers would act as competitors to the local loop, Congress did not address issues of LEC interconnection and compensation arrangement obligations with local competitors in the Budget Act - that issue was dealt with comprehensively in Sections 251 and 252 of the Telecommunications Act of 1996.

B. The Argument That the Commission Has Sole Authority Over LEC-CMRS Interconnection Cannot Be Reconciled With the Plain Language of The Telecommunications Act of 1996

As discussed in detail in the initial comments, the Telecommunications Act of 1996 establishes that local exchange carriers have a variety of duties to requesting telecommunications carriers; "incumbent" local exchange carriers have additional duties. See Section 251(b) and (c). As the conference report makes clear, requesting "telecommunications carriers" include all purchasers of local interconnection services, including commercial mobile service. The duties of incumbent local exchange carriers include, inter alia, the duty to "negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements," including agreements which fulfill the duty to establish reciprocal compensation arrangements. See, e.g., Section 251(c); Kellogg ex parte at 3; Cox ex parte at 5.

Cox argues that, by preserving federal authority to order common carriers to interconnect with CMRS providers, the Telecommunications Act preserves the Commission's exclusive jurisdiction over LEC - CMRS interconnection. Cox ex parte at 7. But this proves nothing - the Commission has always had the authority to order interconnection; neither Section 201 nor Section 332 was ever read to dictate the rates charged by LECs to CMRS providers. 10 FCC Rcd at 7908. Moreover, Congress expressly provided a "savings clause," in a separate section, for federal regulation of interstate access services, which does not include CMRS providers. See Section 251(g)(preserving existing obligations for access services provided to interexchange carriers and information service providers).

The comments of the CMRS providers do not demonstrate, nor could they, how the "savings clause" of Section 251(i) can be read to permit the Commission to preclude what Congress has mandated - good faith negotiations of interconnection arrangements, subject to state oversight, including state oversight of the pricing of interconnection. See Section 252(d). As parties relying on Section 332 are aware, where Congress intends for federal involvement, Congress can be quite plain. Moreover, any authority that is retained by the Commission cannot be exercised in a manner which supersedes what Congress has mandated in the plain language of the Telecommunications Act. Accordingly, the Commission may not adopt mandatory federal guidelines which specify the terms and conditions of interconnection services offered by LECs to CMRS providers.[8]

There is no need for the Commission to begin a power struggle with state regulators over LEC-CMRS interconnection issues, particularly where Congress has so carefully and clearly delineated the separate and distinct roles of state and federal authorities, with respect to the obligations of LECs. The Commission and the public interest would be better served by avoiding protracted proceedings, possible court battles, and the emotional tension associated with a federal decision to preempt state regulation of local competition to provide a windfall to one type of competitor. It would more effectively serve the public interest, including the public interest in the rapid development of local competition, for the Commission to simply implement regulations which establish the LEC duties described in Section 251 and 252. See Comments of the Public Utilities Commission of Ohio at 10.

[8]Indeed, as the Kellogg ex parte makes clear, Congress has precluded any regulator, state or federal, from mandating a bill and keep arrangement. Kellogg ex parte at 5. Similarly, no regulator can mandate any of the terms and conditions, absent arbitration under Section 252(b).

III. The Commission May Not Mandate Interconnection Arrangements for CMRS Providers Without Just Compensation for LEC Provision of Such Services

As discussed in the initial comments, the Notice premises its conclusion that a "bill and keep" requirement will not infringe upon LECs' equitable rights because LECs can recover their costs from their own subscribers. Notice, para. 6; see, e.g., Comments of Cox at 5 (FCC must reject the notion that LEC can recover overhead and joint and common costs from a competitive interconnector). Other parties argue that if total termination costs are approximately equal for each carrier, then neither carrier bears a disproportionate burden, and the cost of the obligation should be absorbed as a "cost of doing business." See, e.g., Comments of CTIA at 21 ("reciprocal termination will allow carriers to recover the cost of terminating traffic"). Lastly, some parties appear to assert that, although bill and keep will not allow LECs to recover their costs, bill and keep is fair punishment for years of unjustifiably inflated interconnection charges." See, e.g., Comments of Cox at 30.

But the Commission may not mandate a bill and keep compensation arrangement, without addressing the issue of how LECs would recover their costs from "their own subscribers," presumably either interstate access customers or local access customers. Interstate access rates are already in need of reform- introducing a CMRS subsidy into those rates would be horrible public policy. And local subscribers rates are subject to the control of state commissions- the Commission cannot directly or indirectly order a local rate increase.

The issue of whether termination costs are equal addresses only whether one carrier bears a disproportionate burden, it does not address the disproportionate methods of recovery permitted by each carrier. While CTIA goes at great lengths to explain how cost obligations might be equal, neither CTIA's comments or the economic study attached explains how LECs can recover the additional cost of terminating CMRS traffic. The best they can say is that the LEC receives an added benefit of termination services from the CMRS provider. But LECs receive no added benefit from these services - they cannot raise their prices to reflect the added calling available to their subscribers. Even if LECs and CMRS providers bear equal costs, they are subject to unequal regulations - CMRS providers are expressly exempted from local rate regulation, while LECs are subject to such regulation; in fact some state commissions have frozen local rates. Also, interconnected CMRS services are considered much more valulable than fixed local services, or other mobile services which offer communications only between mobile units and base stations, or between other mobile units - this fact is reflected in the retail prices paid for cellular, PCS and paging, and in the prices paid for the spectrum used to offer those services.

CTIA's argument is of a kind with the argument raised by other parties - that LECs and CMRS providers are somehow "co-carriers," or "peering" networks, as opposed to a service provider and its customer. See, e.g., Comments of Sprint Spectrum/APC at 8; Comments of MCI at 4; Comments of Cox at 11. But this argument is a definition without a distinction - no party explains what the "co-carrier" relationship entails, other than a right to a bill and keep compensation arrangement. Moreover, any meaningful distinction does not exist and should not be mandated. LECs and CMRS providers have vastly different obligations.[9] No one would ever refer to CMRS facilities as the "public switched network," see Notice at para. 102, even though both CMRS networks and LEC networks are privately owned.

As described by Time Warner, regulatory policies should recognize these differences, and not "bootstrap CMRS providers into an automatic entitlement to co-carrier status before these issues are resolved." Comments of Time Warner at 10; see also Comments of CompTel at 6 (noting the unique status of the incumbent LECs' network in the development of local competition).[10] Moreover, there is no basis to conclude that "co-carrier" status should entitle CMRS providers to a bill and keep arrangement. LECs do not adopt bill and keep in situations

[9]For example, Section 3(44) of the Telecommunications Act of 1996 expressly excludes CMRS providers from the definition of "local exchange carrier."

[10]CompTel notes that, because of this unique status, Congress expressly provided for non-discriminatory arrangements between incumbent LECs and other telecommunications carriers, and that carriers should "pay for [use of the LEC network] based upon the costs they impose upon the network." Comments of CompTel at 6.

where traffic flows are disproportionate; co-carrier relationships among CMRS providers do not utilize bill and keep arrangements. See, e.g., Comments of NYNEX, Taylor Affidavit at 4.

The contention that CMRS providers should be entitled to free interconnection because of past LEC overcharges is preposterous. There is no legal basis for such retroactive and punitive policy making, and no such overcharges have been documented. On the contrary, the Commission should proceed cautiously whenever it subjects any industry to rate regulation, whether it be cable, LEC, or other, to ensure that such regulation is not confiscatory. The ability of the LEC to recover the costs of access services provided to CMRS providers is not merely a question of policy, but of constitutional rights with regard to private property.[11] As the Notice and the initial comments make clear, LECs do incur costs to terminate CMRS traffic - even if their costs are low at the margin, their costs are not zero. And as noted by Smithville Telephone Company, the possibility of a mandatory bill and keep arrangement between LECs and CMRS providers raises concerns regarding the effective confiscation of a carrier's property. Comments of Smithville Telephone, at 5; Comments of US WEST at 49-53.[12] The Commission may not mandate a bill and keep arrangement, even on an interim basis, without addressing this issue.

IV. The Record Contains Ample Evidence that Bill and Keep Is Not Economically Efficient, But Would Increase Administrative Costs

A number of parties argue that the development of appropriate cost-based prices are administratively too complex to develop, and that bill and keep represents a better and simpler alternative which can be implemented on an interim basis with little or no administrative costs. See, e.g., Comments of CTIA at 24; Id. at 30 (usage sensitive pricing will impose more costs

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[11]Amendment V to the Constitution provides that no property shall be taken for public use without just compensation.

[12]As US WEST notes, the revenues from CMRS interconnection services are properly booked to intrastate accounts and are incorporated in developing local rates. Comments of US WEST at 53. Consequently, a mandatory bill and keep arrangement would saddle the states with a billion dollar problem. See Comments of USTA at iii.

than reciprocal termination); Comments of Vanguard Cellular Systems at 4 ("unlike cost-based approaches, [bill and keep] can be initiated without any further administrative proceedings").

Contrary to CTIA's suggestion, usage sensitive pricing will not impose greater costs. For one reason, the facilities needed to measure and bill on a usage sensitive basis are already in place. See Comments of NYNEX, Affidavit of William E. Taylor at 4. And contrary to Vanguard's belief, adoption of an interim plan will likely require numerous further administrative proceedings, and in fact increase administrative costs because LECs will need to implement interim measures to recover the revenue lost in subsidizing wireless interconnection through other means. If this were to involve local rate increases, considerable administrative burdens would be created. Additional cost recovery burdens could be created by the problem of arbitrage. A number of parties noted that an interim bill and keep plan would create incentives for companies to redirect their interstate traffic through their wireless interconnection point, and thus avoid interstate access charges. See, e.g., Comments of LDDS Worldcom at 2.

Finally, as the Commission is no doubt aware, once an industry is granted a subsidy, it become very difficult to remove. CMRS providers would be very reluctant to move to a more appropriate cost-based arrangement at the conclusion of the interim period, see Comments of Cincinatti Bell at 5; and the interim availability of bill and keep would severely distort the negotiation process necessary for long-term interconnection arrangements. Imposing an interim plan would therefore create additional adminstrative burdens associated with the transition to a long-term arrangement. The Commission should avoid creating these additional administrative burdens, and instead turn its attention to the interconnection proceeding contemplated by the Telecommunications Act of 1996. Given the substantial problems that would be created by an interim plan, in addition to the pressure implementation has placed on the Commission's administrative resources, it would be vastly more efficient for the Commission to simply implement the framework established by Congress.

CONCLUSION

The initial comments demonstrate widespread support by CMRS providers for the Commission's tentative conclusion to mandate bill and keep arrangements for LEC interconnection services. But no wonder: the Commission's proposal represents a government-granted advantage which will enrich cellular and PCS providers by as much as a billion dollars. But that advantage will come at the expense of local ratepayers and will do little to foster local competition. It will simply enrich an industry already growing at a phenomenal rate of 45% a year. Fortunately, the initial comments demonstrate sound policy arguments demonstrating that an interim plan is not needed. The record also demonstrates the concurrence of many parties, particularly state regulators, that the Commission has no authority to mandate pricing arrangements for local interconnection. Finally, the record presents no evidence why this proceeding should not be terminated or folded into a larger interconnection proceeding to reform access charges, ensure universal service, and eliminate market distortions and implement Sections 251 and 252 of theTelecommunications Act of 1996 - the proper framework for LEC interconnection services provided to competitors.

Respectfully submitted,

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March 25, 1996

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on March 25, 1996 reply comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

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